IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1394 OF 2005

Hashim Dada Kamate ..Appellant.

Vs.

Babasaheb Abdul Kamate & Ors. ..Respondents.

....

Mr.T.S.Ingale for the Appellant.

CORAM : DR.D.Y.CHANDRACHUD, J.

2nd December, 2005.

P.C. :

Both the Learned Trial Judge and the First Appellate Court have come to the conclusion on the basis of the evidence on the record that the Appellant had failed to establish that there was any encroachment by the Respondent. Gat No.158(1) is of the Appellant, whereas Gat No.158(2) is of the Respondents. Both the parties had received their respective holdings in tenancy proceedings. It is an admitted position that there was a

South-North bandh in existence for over 100 years which had large number of trees standing thereon between the two holdings. The surveyor who was appointed at the behest of the Appellant did not follow any known procedure. He did not measure Gat No.158(2). In these circumstances, the finding of fact that no encroachment has been established does not warrant interference. No substantial question of law is raised. The Second Appeal is dismissed.